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8 UNITED STATES DISTRICT COURT  
9 DISTRICT OF NEVADA

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11 JAMILA AHMED SENNAIN,

12 Plaintiff,

13 v.

14 ANDREW M. SAUL,

15 Defendant.  
16

Case No. 2:20-cv-01869-BNW

**ORDER**

17 Presently before the Court is *pro se* plaintiff Jamila Ahmed Sennain's application to  
18 proceed *in forma pauperis* (ECF No. 1), filed on October 7, 2020.  
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20 **I. *In Forma Pauperis* Application**

21 All parties instituting any civil action, suit, or proceeding in a district court of the United  
22 States must pay a filing fee. *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff's  
23 failure to prepay the entire fee only if the plaintiff is granted leave to proceed *in forma pauperis*  
24 pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

25 Ms. Sennain has submitted the declaration required by 28 U.S.C. § 1915(a) showing an  
26 inability to prepay fees and costs or give security for them. ECF No. 1. Accordingly, Plaintiff's  
27 request to proceed *in forma pauperis* will be granted. The Court will next screen Plaintiff's  
28 complaint. ECF No. 1-1.

## II. Screening the Complaint

### A. Standard of Review

Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint under 28 U.S.C. § 1915(e)(2).<sup>1</sup> In screening the complaint, a court must identify cognizable claims and dismiss claims that are frivolous, malicious, fail to state a claim on which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must “contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In considering whether the complaint is sufficient to state a claim, all allegations of material fact are taken as true and construed in the light most favorable to the plaintiff. *Wyler Summit P’ship v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted). Although the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff must provide more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A formulaic recitation of the elements of a cause of action is insufficient. *Id.* Unless it is clear that the complaint’s deficiencies could not be cured through amendment, a plaintiff should be given leave to amend the complaint with notice regarding the complaint’s deficiencies. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

Even following the U.S. Supreme Court’s holdings in *Twombly* and *Iqbal*, the Court has an “obligation . . . where the petitioner is *pro se* . . . to construe the pleadings liberally and to afford the petitioner the benefit of any doubt.” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (internal quotations and citation omitted). But “the liberal pleading standard . . . applies only to a plaintiff’s factual allegations.” *Neitzke v. Williams*, 490 U.S. 319, 330 n.9 (1989); *see*

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<sup>1</sup> Although § 1915 largely concerns prisoner litigation, § 1915(e) applies to all *in forma pauperis* proceedings. *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners[.]”).

1 *also Bruns v. Nat'l Credit Union Admin.*, 12 F.3d 1251, 1257 (9th Cir. 1997) (quoting *Ivey v.*  
2 *Board of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)) (noting that a liberal construction may not  
3 be used to supply an essential element of the claim absent from the complaint).

4 In the context of social security appeals, if a plaintiff's complaint challenges a decision by  
5 the Social Security Administration, the plaintiff must exhaust administrative remedies before  
6 filing a lawsuit. *See* 42 U.S.C. § 405(g); *see also Bass v. Social Sec. Admin.*, 872 F.2d 832, 833  
7 (9th Cir. 1989) (per curiam) ("Section 405(g) provides that a civil action may be brought only  
8 after (1) the claimant has been party to a hearing held by the Secretary, and (2) the Secretary has  
9 made a final decision on the claim"). Generally, if the SSA denies a claimant's application for  
10 disability benefits, the claimant may request reconsideration of the decision. If the claim is denied  
11 at the reconsideration level, a claimant may request a hearing before an administrative law judge  
12 ("ALJ"). If the ALJ denies the claim, a claimant may request review of the decision by the  
13 Appeals Council. If the Appeals Council declines to review the ALJ's decision, a claimant may  
14 then request judicial review. *See generally* 20 C.F.R. §§ 404, 416.

15 Once a plaintiff has exhausted administrative remedies, she may obtain judicial review of  
16 a SSA decision denying benefits by filing suit within 60 days after notice of a final decision. *Id.*  
17 An action for judicial review of a determination by the SSA must be brought "in the district court  
18 of the United States for the judicial district in which the plaintiff resides." *Id.* The complaint  
19 should state the nature of plaintiff's disability, when plaintiff claims she became disabled, and  
20 when and how she exhausted her administrative remedies. The complaint should also contain a  
21 plain, short, and concise statement identifying the nature of plaintiff's disagreement with the  
22 determination made by the SSA and show that plaintiff is entitled to relief.

23 A district court can affirm, modify, reverse, or remand a decision if plaintiff has exhausted  
24 her administrative remedies and timely filed a civil action. However, judicial review of the  
25 Commissioner's decision to deny benefits is limited to determining: (a) whether there is  
26 substantial evidence in the record as a whole to support the findings of the Commissioner, and (b)  
27 whether the correct legal standards were applied. *Morgan v. Commissioner of the Social Security*  
28 *Adm.*, 169 F.3d 595, 599 (9th Cir. 1999).

**B. Analysis**

Here, Ms. Sennain appears to allege that the Social Security Commissioner denied Plaintiff's disability application under Title II of the Social Security Act. ECF Nos. 1-1, 1-2.

Although she indicated that she resides within the District of Nevada and provided a plain, short, and concise statement identifying her disagreement with the SSA's determination,<sup>2</sup> her complaint is still deficient. *Id.* This is because, even liberally construing Plaintiff's complaint, the Court cannot determine whether she exhausted her administrative remedies and timely commenced this action. Without this information, the Court is unable to determine whether it has jurisdiction over the matter. *See Bass*, 872 F.2d at 833 (noting that judicial review of administrative decisions by the SSA is limited to a final decision of the Commissioner of Social Security); *see also* 20 C.F.R. §§ 416.1407, 416.1429, 416.1467, 416.1481 (An individual who is dissatisfied with the SSA's initial determination must (1) first seek administrative reconsideration, (2) then seek an administrative hearing before an ALJ, and (3) then file a request for the Appeals Council review of the ALJ's decision. The administrative review process is complete only when the Appeals Council either denies or grants review and issues a decision. It is only at this point that a court may review the Commissioner's final decision.).

Accordingly, the Court will order that Plaintiff's complaint be dismissed, but with leave to file an amended complaint.

The Court will also order the Clerk of Court to mail Plaintiff a blank template complaint for review of a social security disability or supplemental security income decision (i.e., Form Pro Se 13). The Court advises Plaintiff to complete the form fully and in its entirety, including indicating the nature of Plaintiff's disability, when she claims she became disabled, and when and how she exhausted her administrative remedies. The Court also advises Plaintiff to attach a complete copy of the Appeals Council's letter. This is so the Court can determine if it has jurisdiction over the matter. Further, the Court advises Plaintiff that the amended complaint must

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<sup>2</sup> Liberally construing the complaint, Ms. Sennain appears to allege that the ALJ erred in finding two of Plaintiff's impairments (i.e., hypereosinophilic syndrome and eosinophilic colitis) not severe, and the ALJ failed to weigh all of the evidence, including contradictory evidence relating to Plaintiff's neurological findings. ECF No. 1-1 at 6–8.

1 also contain a short and plain statement identifying the nature of Plaintiff's disagreement with the  
2 SSA's determination. Although the Federal Rules of Civil Procedure adopt a flexible pleading  
3 standard, Plaintiff must still give the Commissioner of Social Security fair notice of the reason(s)  
4 Plaintiff is seeking review of the Commissioner's decision.

5 Additionally, the Court advises Plaintiff that if she files an amended complaint, the  
6 original complaint (ECF No. 1-1) will no longer serve any function in this case. This is because  
7 the Court cannot refer to a prior pleading or other documents to make Plaintiff's amended  
8 complaint complete. *See Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542,  
9 1546 (9th Cir. 1989) (holding that "[t]he fact that a party was named in the original complaint is  
10 irrelevant; an amended pleading supersedes the original"). Put another way, the amended  
11 complaint must be complete in and of itself without reference to prior pleadings or other  
12 documents.

13 Finally, if Plaintiff chooses to file an amended complaint, the Court will screen it in a  
14 separate Screening Order as required by 28 U.S.C. § 1915(e)(2).

15 1. IT IS THEREFORE ORDERED that Plaintiff Jamila Ahmed Sennain's  
16 request to proceed *in forma pauperis* (ECF No. 1) is GRANTED. Plaintiff will not be required to  
17 pay the filing fee of \$400.00.

18 2. IT IS FURTHER ORDERED that Plaintiff is permitted to maintain this  
19 action to conclusion without the necessity of prepayment of any additional fees or costs or giving  
20 security for them. This Order granting leave to proceed *in forma pauperis* does not extend to the  
21 issuance of subpoenas at government expense.

22 3. IT IS FURTHER ORDERED that the Clerk of Court shall file Plaintiff's  
23 Complaint (ECF No. 1-1).

24 4. IT IS FURTHER ORDERED that the Complaint (ECF No. 1-1) is  
25 DISMISSED without prejudice and with leave to amend.

26 5. IT IS FURTHER ORDERED that if Plaintiff wishes to file an amended  
27 complaint, she must do so by November 30, 2020. If she chooses to file an amended complaint,  
28 she must write the words "First Amended Complaint" in the caption. The amended complaint will

1 be screened in a separate Screening Order. Additionally, the amended complaint must be a  
2 complete document in and of itself and will supersede the original complaint (ECF No. 1-1) in its  
3 entirety. Any allegations, parties, or requests for relief from prior papers that are not carried  
4 forward in the amended complaint will no longer be before the Court. If Plaintiff moves forward  
5 with her request to have the Court review the SSA's disability determination, the amended  
6 complaint must include a copy of the Appeals Council letter and specify when the Appeals  
7 Council denied review. The amended complaint should also specify when Plaintiff filed for  
8 disability benefits, when she had a hearing with the Administrative Law Judge, when the  
9 Administrative Law Judge denied her disability claim, and when Plaintiff appealed to the Appeals  
10 Council to review the Administrative Law Judge's decision. Additionally, the amended complaint  
11 should include the summons to serve the Commissioner of the Social Security Administration.

12           6.       IT IS FURTHER ORDERED that the Clerk of Court send Plaintiff  
13 one blank complaint form for review of a social security disability or supplemental security  
14 income decision (Form Pro Se 13), one copy of the original complaint (ECF No. 1-1), and one  
15 copy of this Screening Order.

16           DATED: October 27, 2020

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18 BREND A WEKSLER  
19 UNITED STATES MAGISTRATE JUDGE  
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